



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

AAAAA7A792

Ref: 8HWM-PF

Mr. Frazer Lockhart  
Department of Energy  
Rocky Flats Office  
P.O. Box 928  
Golden, CO 80402-0928

ADMIN RECORD

re: OU 8 Dispute Resolution

Dear Mr. Lockhart:

This letter is being forwarded to document the basis for informal resolution of the referenced dispute agreed upon in our meeting on June 17, 1992. We have based this correspondence on the draft language you forwarded to us, with some modifications which we feel more clearly reflect the concerns discussed in the meeting. We advance this offer in hopes of expeditiously resolving this dispute so our attention can be directed to continuing efforts to resolve the difficulties that led to its initiation. Our offer of settlement terms is as follows:

- All parties to the Interagency Agreement (IAG) agree that the State of Colorado has the authority under paragraphs 239 and 102 of the IAG, to issue a Notice of Violation for violations of any aspect of the IAG; the action taken in regard to OU 8 was within the scope of this authority.
- All parties agree that DOE and its contractor are attempting to make progress in improving the acquisition (procurement) system and procedures for Environmental Restoration (ER) work. However, the present procurement process continues to hinder implementation of cleanup efforts at Rocky Flats and thus, requires further attention. Use of the streamlined Master Task Subcontracts will begin in July and August, 1992. Other opportunities for improvement of this system exist, including elimination of the presumption that Organizational Conflict of Interest (OCI) precludes subcontractors from performing all phases of ER work within an operable unit. DOE will continue to address streamlining the procurement and contracting mechanisms and will routinely inform EPA and CDH of progress towards preventing the procurement and contracting procedures from impacting the IAG.
- All parties agree that DOE has not adequately informed CDH/EPA concerning acquisition problems as they occur,

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and progress towards resolving problems. DOE will propose, and all parties will agree on a more reliable mechanism to provide updated status, possibly through formal correspondence or the monthly IAG status report. DOE commits to the use of the agreed upon mechanism.

- The Organization Conflict of Interest (OCI) issue is a fundamental concern which is still unresolved. All parties agree that DOE should aggressively pursue the policy question regarding OCI for ER contractors, and their ability to do all phases of ER work. All parties agree that as scopes are defined by DOE and final approvals are given by EPA/CDH, contractors cannot 'pad' workscopes. All parties agree that the following problems could be eliminated if the OCI presumption were resolved:

- Exclusion of contractors discards valuable knowledge gained during the performance of work.
- ER schedules are lengthened and costs increased.
- Contractors may avoid smaller tasks to ensure they will not be excluded from high dollar work.

Progress on the OCI issue will be reported at the Monthly managers meeting; resolution is expected within 90 days.

- All parties agree that other Federal agencies have not interpreted similar constraints under the Federal Acquisition Regulations (i.e., EPA, DOD, etc.).

Please provide your written acceptance of this offer by close of business on Wednesday, June 24, 1992, or contact Bill Fraser (EPA) at 294-1081, and/or Harlen Ainscough (CDH) at 331-4977, to arrange for drafting of a Statement of Dispute for the Dispute Resolution Committee.

Sincerely,

*W. C. Fraser (for)*

Martin Hestmark, EPA  
Manager  
Rocky Flats Project

*Gary W. Baughman*

Gary Baughman, CDH  
Unit Leader  
Hazardous Waste Facilities

cc: Scott Grace, DOE  
Randy Ogg, EG&G